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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 WENDELL DWAYNE O'NEAL,  
8 Plaintiff,  
9 v.  
10 TERRI ALBERTSON, et al.,  
11 Defendants.  
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Case No. 2:17-cv-03025-JAD-CWH

**REPORT AND RECOMMENDATION**

13 This matter is before the court on pro se plaintiff Wendell Dwayne O'Neal's application  
14 to proceed *in forma pauperis* (ECF No. 1), filed on December 8, 2017. Also before the court is  
15 O'Neal's motion for leave to file electronically (ECF No. 5), filed on January 5, 2018.

16 O'Neal was designated as a vexatious litigant in this district under 28 U.S.C. § 1651(a).  
17 See Order (ECF No. 173) in *O'Neal v. Empire Fire & Marine Insurance Company, Inc., et al.*,  
18 No. 2:16-cv-02313-JCM-CWH (D. Nev. Apr. 4, 2018). O'Neal was "enjoined and prohibited  
19 from filing any new complaint, petition, or other action in this court without first obtaining leave  
20 from the chief judge of this court." *Id.* at 5. O'Neal's *in forma pauperis* status also was revoked  
21 in that case because he paid the \$400.00 filing fee. See Order (ECF No. 36) in No. 2:16-cv-  
22 02313-JCM-CWH.

23 Although this case was commenced before O'Neal was declared a vexatious litigant, there  
24 is significant overlap between the allegations in this case and the allegations in *O'Neal v. Empire*  
25 *Fire & Marine Insurance Company, Inc.* It appears that the cases involve: many of the same  
26 parties; the same or similar claims; the same property, transaction, and events; and the same or  
27 similar questions of law. Given that O'Neal has been declared a vexatious litigant for his conduct  
28 in pursuing substantially similar claims to those at issue in this case, the court recommends that

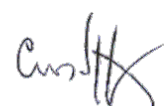
1 O'Neal's application to proceed *in forma pauperis* and motion to file electronically be denied and  
2 that his case be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B).

3 IT IS SO RECOMMENDED.

4 **NOTICE**

5 This report and recommendation is submitted to the United States district judge assigned  
6 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
7 may file a written objection supported by points and authorities within fourteen days of being  
8 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely  
9 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d  
10 1153, 1157 (9th Cir. 1991).

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12 DATED: July 20, 2018

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16 C.W. HOFFMAN, JR.  
17 UNITED STATES MAGISTRATE JUDGE  
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